

From: Ellen Lebowitz [ellenl@ellenlebowitz.com]

Sent: Friday, March 02, 2007 3:57 PM

To: Salahuddin Qazi (DNREC)

Cc: Werner James D. (DNREC); Hughes John A. (DNREC); Brainard Mark T. (Governor); Sorenson Liane (LegHall); Schooley Terry (LegHall); McWilliams Diana (LegHall)

Subject: Schnabel Report Public Comment-WCWG

Dear Mr. Salahuddin,

Thank you for reading these comments from the *Waste Crisis Working Group*.

Best regards,

Ellen Lebowitz, ellenl@ellenlebowitz.com ,

302.738.9777

WASTE CRISIS WORKING GROUP POSITION PAPER FEBRUARY 28, 2007

Schnabel Engineering Report Condemns DuPont's "Iron Rich" Pile

The independent study report of the DuPont's Edgemoor "Iron Rich" pile prepared by Schnabel Engineering of West Chester, PA, has confirmed community fears that the 2001 DuPont-DNREC agreement to leave the contaminated waste material in place is inadequate in addressing public health concerns, and will not contain the waste for more than a few decades. The report also states that concerns about toxic wastes in the dredge material underneath the pile, which are subject to leaching and migration, have not been properly addressed.

For two years, the Waste Crisis Working Group (WCWG) formed by concerned citizens in New Castle County, has been tracking the controversy surrounding what some call the DuPont "dioxin pile" located near Edgemoor. At its February 2007 meeting, it reviewed the recently released "Schnabel Report," and made several comments, observations and recommendations.

The material in the pile is the byproduct of DuPont's titanium dioxide pigment operation outside Wilmington and had been accumulating there for years. The 20 acre mound is just a few feet from the Delaware River and spawning areas of Striped Bass and other aquatic species. Residents live as close as a mile to this toxic waste dump.

Report Timeline

Public hearings were demanded by citizens after the January 2005 DuPont-DNREC unveiling of their "consent decree" by which they agreed to cap the more than one half million tons of waste and leave it in place in perpetuity. In the hearings that followed, citizens argued that the material should be moved to a qualified waste disposal site.

In response to the controversy at the hearings, HCR 22 was passed in June 2005 calling for the independent study. The study was limited to examining old data, even though it was clear that additional data was necessary to complete a meaningful and definitive study. Therefore the WCWG and others felt that this resolution was simply a stalling tactic. Approximately a year passed before Schnabel was selected to perform the study. Their report was released in late December 2006. DNREC has given the public until March 2 to comment on the Schnabel report. WCWG feels there should have been more effort exerted by DNREC to inform members of the public of the availability of the report and the ensuing comment period.

Schnabel Report Findings

In general, the Schnabel report states that the information provided them by DuPont and DNREC was inadequate to make clear assessments. It describes troublingly inadequate and inconsistent scientific methods of data collection and risk assessments. Those active in following this issue find it surprising that the company and regulatory agency would accept this level of analysis. The report says that more information is required to

properly evaluate the risks to humans, animals and the environment. The report discusses in detail several ways in which the DuPont-DNREC plan underestimates the danger to human health and the environment. The current state of disrepair of the pile is reason for concern as to how well DuPont will maintain and monitor the pile in the long term. Some of the findings and conclusions include:

1. Capping does not address contamination existing from wind-blown toxics and leaching into the surrounding land and water.
2. There is significant danger of toxins seeping into the water table below the pile. DuPont has improperly discounted this fact.
3. There is significant danger of toxins entering into the food chain from plants growing on and around the pile and animals foraging here. DuPont had claimed no vegetation would grow here.
4. Levels of dioxin and associated health risks were inconclusive but other cancer-causing materials such as hexachlorobenzene were found at levels deemed dangerous to humans.
5. Options with regard to moving the pile were not realistically considered by DuPont-DNREC. Schnabel lists four reasons why DuPont's stated transport risk of the material creates a "false dilemma," including the fact that the same material has been transported for many years. The chemical company did not even assess the use of rail as a means to move the material, which would be safer and far more economical.
6. The plan grossly overstated the lifespan of the capping system it proposes.
7. Capping would render any future use or development of the land impossible because any changes would compromise the integrity of the capping material. This would mean the land loses all its value.

Official Reaction....or Lack of It

1. The Legislature and the resolution sponsor Rep. Diana McWilliams have not indicated their positions on the Schnabel report.
2. DNREC has not commented on the report or the validity of the deficiencies it identifies.
3. DuPont has not responded to the report

The Waste Crisis Working Group is concerned that there has been no official response to the Schnabel report in the two months since its release. This concern is compounded by a belief that the lack of a clear conclusion will lead to more official indecision and further procrastination at a time when firm action is called for. WCWG believes that although Schnabel indicates a clear lack of critical data to conclude with exact certainty how much and what types of hazardous substances are in the pile, there is plenty of data confirming that sufficient amounts of contaminants-of-concern exist to make capping inadequate as well as dangerous to human and animal receptors and the environment.

Call to Action

The decision between DuPont and DNREC does not serve the public interest. WCWG encourages its members and other concerned citizens to take appropriate actions that will lead to removal of the pile. Due to the documented shortcomings of DuPont/DNREC's original submission, the agreement between them, calling for capping and leaving the pile, should be rescinded.

We, members of the Waste Crisis Working Group, and the undersigned:

- Request a public hearing to get an in depth explanation of, and the opportunity to comment on, the Schnabel report.
- Ask that the Attorney General review the enforcement role of the State. In order to discourage continued delays in action, and to acknowledge damages to date, legal proceedings should be considered by the State for restitution and fines for environmental damage and continued health risks by chemical contamination which has already occurred and will continue to occur until remediation is carried out.
- Request further data collection and analysis of samples of surrounding water, soil and air. Remedial action and restitution to surrounding communities should be required as indicated by these further studies.

- Call for an extension of the comment period until March 31.

Respectfully,

Ellen Lebowitz, 909 Rockmoss Ave., Newark, DE 19711

Steve Tindall

John Flaherty

Maryanne McGonegal

Ernie Lehman

Coralie Pryde

Susan Kaye

Mike Figiel